

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>AN ELECTRONIC EXAMINATION OF THE</b>	)	
<b>APPLICATION OF THE FUEL ADJUSTMENT</b>	)	
<b>CLAUSE OF EAST KENTUCKY POWER</b>	)	<b>CASE NO. 2021-00293</b>
<b>COOPERATIVE, INC. FROM NOVEMBER 1, 2020</b>	)	
<b>THROUGH APRIL 30, 2021</b>	)	

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**MOTION FOR CONFIDENTIAL TREATMENT**

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Comes now East Kentucky Power Cooperative, Inc. (“EKPC”), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Kentucky Public Service Commission (“Commission”) afford confidential treatment to certain documents filed in response to two requests for information in the above-captioned proceeding, respectfully states as follows:

1. The Commission issued its Order establishing this case on August 18, 2021 and included the initial set of requests for information to EKPC as an Appendix to that Order.
2. Request No. 4 from the March 4<sup>th</sup> request for information states as follows:
  4. List each written coal supply solicitation issued during the period under review.
    - a. For each solicitation, provide the date of the solicitation, the type of solicitation (contract or spot), the quantities solicited, a general description of the quality of coal solicited, the time period over which deliveries were requested, and the generating unit(s) for which the coal was intended.
    - b. For each solicitation, state the number of vendors to whom the solicitation was sent, the number of vendors who responded, and the selected vendor. Provide the bid tabulation sheet or corresponding document that ranks the proposals. (This document should identify all vendors who made offers.) State the reasons

for each selection. For each lowest-cost bid not selected, explain why the bid was not selected.

3. In its response to Request No. 4, EKPC is providing a copy of its bid tabulation sheets, which include information that is responsive to the request for information.

4. Request No. 11 from the August 18<sup>th</sup> request for information states as follows:

11. a. For the period under review, state whether there have been any changes to EKPC's written policies and procedures regarding its fuel procurement? If yes:
  - (1) Describe the changes;
  - (2) Provide the written policies and procedures as changed;
  - (3) State the date(s) the changes were made; and
  - (4) Explain why the changes were made.
- b. If no, provide the date EKPC's current fuel procurement policies and procedures were last changed, when they were last provided to the Commission, and identify the proceeding in which they were provided.

5. In its response to Request No. 11, EKPC is providing a copy of its Board Policy 405, Hedging. Board Policy 405, Hedging was updated on November 10, 2020.

6. The information and documents tendered by EKPC in response to Request No. 4, and Request No. 11 are being tendered in redacted form in the public version of EKPC's filing and in an unredacted form filed under seal herewith. Collectively, this information and these documents are hereinafter referred to as the "Confidential Information."

7. The Confidential Information contains extensive information that describes the business planning assumptions, procurement and hedging strategy of EKPC with regard to fuel as well as the information received and generated by EKPC in the course of conducting written and oral solicitations for fuel. This information is commercially sensitive and proprietary. More specifically, the Confidential Information includes: procurement and hedging strategies; coal specifications received from third-party bidders; pricing data for coal bids received from third-

party bidders; and recommendations from EKPC Staff regarding the selection of particular vendors to supply fuel to EKPC's generating fleet.

8. The Confidential Information is retained by EKPC on a "need-to-know" basis and is not publicly available. If disclosed, the Confidential Information would give potential vendors and competitors a tremendous competitive advantage in the course of ongoing and future negotiations to procure fuel. These market advantages would likely translate into higher costs for EKPC and, by extension, detrimentally higher rates for EKPC's Members. Thus, disclosure of the Confidential Information would be highly prejudicial to EKPC, EKPC's Owner-Member Cooperatives and those owner-members' End-Use Retail Members.

9. The Kentucky Open Records Act exempts the Confidential Information from public disclosure. *See* KRS 61.878(1)(c). As set forth above, disclosure of the Confidential Information would permit an unfair advantage to third parties. Moreover, the Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary.'" *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766, 768 (Ky. 1995). Because the Confidential Information is critical to EKPC's effective execution of business decisions and strategy, it satisfies both the statutory and common law standards for being afforded confidential treatment. Indeed, the Commission has routinely recognized the confidential nature of the information included in the responses and has afforded confidential treatment to identical information in a prior proceeding.<sup>1</sup>

10. EKPC does not object to limited disclosure of the Confidential Information, pursuant to an acceptable confidentiality and nondisclosure agreement, to the Attorney General or

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<sup>1</sup> *See e.g. In the Matter of the Electronic Examination of the Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2017 Through October 31, 2017*, Order, Case No. 2018-00019 (Ky. P.S.C., October 18, 2018).

any other intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case.

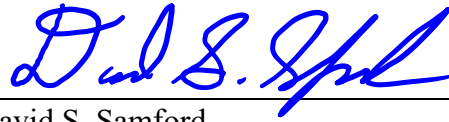
11. In accordance with the provisions of 807 KAR 5:001, Section 13(2), EKPC is filing one copy of the Confidential Information separately under seal. The filing of the Confidential Information is noted in the public version of EKPC's response to Request No. 4 and Request No. 11, which include redacted copies of such information.

12. In accordance with the provisions of 807 KAR 5:001, Section 13(3), EKPC respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information – if disclosed after that time – will be less likely to include information that continues to be commercially sensitive so as to impair the interests of EKPC if publicly disclosed. However, EKPC reserves the right to seek an extension of the grant of confidential treatment if it is necessary to do so at that time.

WHEREFORE, on the basis of the foregoing, EKPC respectfully requests the Commission to enter an Order granting this Motion for Confidential Treatment and to so afford such protection from public disclosure to the unredacted copies of Confidential Information, which is filed herewith under seal, for a period of ten years from the date of entry of such an Order.

This 1<sup>st</sup> day of September, 2021.

Respectfully submitted,



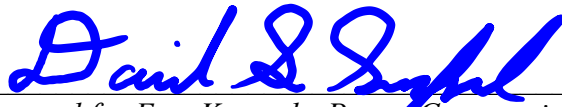
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**CERTIFICATE OF SERVICE**

This is to certify that the electronic filing was transmitted to the Commission on September 1, 2021 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.



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*Counsel for East Kentucky Power Cooperative, Inc.*